

8.0 RECOMMENDATIONS OF FISH AND WILDLIFE AGENCIES

Under the provisions of Section 10(j) of the Federal Power Act (FPA), each hydroelectric license issued by FERC is required to include conditions based on recommendations provided by federal and State fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife resources potentially affected by the project. FERC is required to include the recommended conditions, unless it believes that they are inconsistent with the FPA or other applicable laws. Section 10(j) of the FPA states that whenever FERC believes that any fish and wildlife agency recommendation is inconsistent with the purposes and the requirements of the FPA or other applicable laws, FERC and the agency shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

Section 4.7 of the FERC Hydroelectric Project Licensing Handbook (FERC 2001) outlines the Section 10(j) process for those relicensing applications filed under the Alternative Licensing Procedures (ALP). Under the ALP, where the application contains a consensus for the proposed PM&E measures, FERC likely could avoid a Section 10(j) dispute resolution process. The following is a summary of the Section 10(j) process as provided in the FERC Handbook.

Submission of recommendations by fish and wildlife agencies marks the beginning of the process under Section 10(j) of the FPA. The agencies will submit preliminary terms and conditions recommendations in response to the Ready for Environmental Analysis (REA). There are no preliminary terms and conditions from the agencies at this time. It is anticipated that preliminary recommendations will be filed by the U.S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA) Fisheries, and DFG.

DWR entered into informal consultation with USFWS to address terrestrial listed species prior to the initiation of formal consultation to be conducted after license application filing. USFWS recommended several measures for early implementation (under the existing FERC license) to minimize or avoid take of a federally listed species related to baseline conditions. These measures are described in a draft terrestrial BA, and are included in the No-Action Alternative. All other USFWS recommended measures included in the draft terrestrial BA are included in both the Proposed Action and Alternative 2.

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